

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DANNY DAVIS,

Plaintiff,

v.

CORRECTIONAL MEDICAL SERVICES
INC., *et al.*,

Defendants.

Case No. 1:04-CV-688

Hon. Richard Alan Enslen

ORDER

Plaintiff Danny Davis, acting *pro se*, has moved to amend or alter the Court's Partial Judgment of August 11, 2005, which dismissed without prejudice claims against Defendant Paula Meyers, Kim Beckham, Lisa Kissau, Edward Pearson, Nancy Stearns, Ray Wolf, Michelle Horton, Nancy Stearns, and Correctional Medical Services, Inc. as unexhausted. Plaintiff also seeks to amend his Complaint pursuant to Federal Rule of Civil Procedure 15 to document belated exhaustion of those claims. Plaintiff's Motion to Amend is accompanied by grievance forms which purport to show that Plaintiff has recently exhausted grievance remedies as to said Defendants and claims.

Notwithstanding Plaintiff's showing, Plaintiff is not entitled to reinstatement of the claims. This issue was previously addressed by the Sixth Circuit Court of Appeals in the published decision of *Freeman v. Francis*, 196 F.3d 641, 645 (6th Cir. 1999), which held in part that exhaustion of claims while a suit is pending is insufficient to meet the statutory requirement of exhaustion at the time of the filing of the suit. This holding remains the law of this Circuit, as well as other circuits. *See Curry v. Scott*, 249 F.3d 493, 502 (6th Cir. 2001); *Higginbottom v. Carter*, 223 F.3d 1259, 1261 (11th Cir. 2000); *Medina-Claudio v. Rodriguez-Mateo*, 292 F.3d 31, 36 (1st Cir. 2002) (citing cases).

THEREFORE, IT IS HEREBY ORDERED that Plaintiff Danny Davis' Motion to Amend (Dkt. No. 90) is **DENIED**.

DATED in Kalamazoo, MI:
April 18, 2006

/s/ Richard Alan Enslen

RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE